

# Town of Union

## PLAN COMMISSION MEETING

### Minutes of July 31, 2008

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The Town of Union Plan Commission regular monthly meeting was called to order on Thursday, July 31, 2008 at the Eager Free Public Library, 39 W. Main St., Evansville, WI at 7:00 p.m. by Chairman Alvin Francis. Members present included Alvin Francis, Doug Zweizig, Kim Gruebling, Eric Larsen, Dave Pestor, Renee Exum, and Doug Lee. Also in attendance: Town Chairman Kendall Schneider, Town Supervisor Don Krajeck, Town Engineer Greg Hofmeister, Building Inspector Bob Fahey, Town Attorney Matt Dregne, and Clerk Regina Ylvisaker.

#### **Approve June 26 and July 28, 2008 Plan Commission Minutes**

Kim Gruebling noted a correction on page 4 of the June 26, 2008 minutes: "Gruebling wanted it made clear that anything that is not specifically spelled out on the CUP will be allowed" should be changed to "Gruebling wanted it made clear that anything that is not specifically spelled out on the CUP will not be allowed."

Alvin Francis stated that the name "Greg Prudhon" on page 4 of the June 26, 2008 minutes should be changed to "Rich Prudhon."

Motion to approve June 26, 2008 Plan Commission meeting minutes as amended made by Eric Larsen. Second by Kim Gruebling. Motion carried by unanimous voice vote.

The minutes of the July 28, 2008 Plan Commission meeting will be approved at the next working meeting.

#### **Public Hearing: Review and approval of extension of existing Conditional Use Permit held by Bob Aebly to operate a gravel pit on 8 acres of land on Cty. Rd. T.**

The original CUP was granted in July 1996; according to Bob Aebly the pit was in operation prior to that date and was grandfathered in. Aebly stated that the pit is currently under contract with Wingra Stone. He also stated that Rick Eager was involved in the pit for a period of time, leased the pit, and still has signage up at the location. Nothing has been taken out of the pit by Wingra during the last few years. Francis asked if there is a reclamation plan in place for the pit; Aebly believes that Wingra has one, but is unsure if it was ever submitted to the Town. Francis would like to have a copy of the plan on file. Francis asked if the pit is just a limestone quarry, or if it is also used for storage; Aebly confirmed that the pit is not used for storage, however Green County has stored pea gravel there in the past.

Gruebling stated that recently the Phelps pit was requested to conform to a number of issues, including submitting a reclamation plan, and feels that Aebly's pit should be required to do the same thing. Francis believes a lot of the things that the Plan Commission would like to see in writing related to the pit should be contained within the reclamation plan, and he would like to see the plan in a year and believes that the CUP should be renewed until then. Zweizig thinks that since we have no paperwork (i.e. original application) we should be requiring a new application to define the boundaries of the CUP. For example, the original information from 1996 states that the hours of operation will run from 6 am-6 pm, but does not define which days of the week the pit will be allowed to operate.

Attorney Dregne believes that given the language related to the prior approvals of the CUP, the previous CUP expired after five years, and therefore a new application is needed for a new CUP at this time. This should not be viewed as a renewal, in his opinion. The motion made in 2003 did not include a statement about a renewal option. Gruebling feels that since the Plan Commission has been established, a precedent has been set, and applicants need to go through the application process. Eric Larsen expressed concerns about the difference in costs associated with a renewal vs. a new application. Dregne questioned if neighbor notices have been done in the past for CUP renewals; they have not, only done for new CUPs.

Motion to table the request to extend the existing Conditional Use Permit held by Bob Aebly to operate a gravel pit on 8 acres of land on Cty. Rd. T (Hwy 104) until an application is received, at the August Plan Commission meeting, made by Kim Gruebling. Second by Doug Zweizig.

Attorney Dregne stressed the importance of following all appropriate procedures, including neighbor notices. Zweizig would like to be sure that the applicant knows what questions will be asked of them at the next meeting, perhaps the Plan Commission should provide him with a copy of the CUP for the Phelps pit. Gruebling suggested issuing the CUP

for a shorter period of time; past practice has been issuing CUPs for longer periods of time but the CUPs were issued by the Town Board at that time, he believes that it should be changed to be in line with other CUPs issued. Aebly is concerned that this requirement will be a problem for the operators, as it will be too short of a timeline. Attorney Dregne believes that timelines for CUPs should be determined on a case by case basis, as not every situation is the same.

Clerk Ylvisaker noted the deadline dates for submitting CUP application materials; to be on the agenda for the August Plan Commission meeting the materials would need to be submitted to the Building Inspector by August 1, and to the Clerk by August 8.

Motion amended by Kim Gruebling to state that the application would be considered at the September Plan Commission meeting, and to state that neighbor notifications be done in conjunction with the application. Second by Doug Zweizig.

A reclamation plan should be included in the application. Larsen asked if the application will require a fee. Gruebling believes the decision is the Town Board's to make, but the Plan Commission could make a recommendation. The fee would be \$500 for a new application. Renee Exum asked if the Plan Commission should request hours and days of operation as part of the application. Motion amended by Kim Gruebling to include requiring submission of a reclamation plan and dates/hours of operation with the application. Second by Doug Zweizig.

Roll call vote: Alvin Francis– Yes; Doug Zweizig – Yes; Kim Gruebling – Yes; Dave Pestor – Yes; Doug Lee – Yes; Eric Larsen – Yes; Renee Exum - Yes. Motion carried 7-0.

Gruebling doesn't believe that the Plan Commission has the authority to set fees, only the Town Board holds that authority.

Motion to recommend that the Town Board make the decision regarding the fee for the Aebly gravel pit application made by Eric Larsen. Second by Renee Exum. Motion carried by unanimous voice vote; Kim Gruebling abstained.

**Public Hearing: Review and approval of extension of existing Conditional Use Permit held by Tom & Connie Davis 10608 N. East Union Rd. Evansville, WI 53536 to operate a pheasant shooting preserve on parcel 6-20-94 located along North East Union Rd. in the SW 1/4, NE 1/4 of Section of the Town of Union. The pheasant preserve may be open by appointment only between the hours of 8 a.m. and 5 p.m. Monday through Friday and from 8 a.m. - 5 p.m. on Saturdays and noon to 5 p.m. on Sundays beginning October 1<sup>st</sup> and ending April 30<sup>th</sup>. Hunting may commence at the east-west property line which is approximately 1,400 feet from the south property line.**

Public hearing opened at 7:48 pm.

Francis reviewed an email from Scott McElroy regarding his support of the facility:

*"I wanted to send you all a note and ask that you take the time to personally visit Tom and Connie Davis's lodge before any decision is made. I was invited to a graduation party this past weekend for Lucas Davis, and this was held at their Lodge facility.*

*This facility is absolutely beautiful. It appears first class in every regard. The area inside is large enough for any time of meetings, there are adequate restrooms, and plenty of available parking.*

*I am not familiar with the particulars or details of the issue(s) before the Township related to Tom & Connie Davis, but I would ask that each of inquire about touring the facilities and seeing what exactly the building is & has to offer, and what the Davis's planned use for it is.*

*This building is most impressive and I would hate to see it go to waste when all parties involved could easily meet for a tour and answer specific questions related to its intended use. This is nothing more than good government and good communication.*

*Personally, I'd like for all Union Township meetings to be held in this facility because of the available room and parking. It is far better than Hagen's Insurance building or the Library.*

*That being said, I would ask that someone please take the appropriate step(s) and try to set up an **on-site** visit so you can see for yourself what the building has to offer and make a determination whether or not it is appropriate for the intended use as requested by Connie & Tom Davis.*

*If anything, you will be in a better position to make a decision after you have toured the facility and have had questions answered by the owners on site, than if you had not done so."*

Francis then reviewed a letter received from John and Emily Winburn:

*"We reside on the property adjacent to the Davis hunting lodge. We respectfully request to express our total opposition to any more special treatment to the Davises and/or granting of any zoning variances or permits (conditional or unconditional) to the Davises by the Town of Union Board or Plan Commission.*

*When the conditional permit for pheasant hunting was granted, there was no mention of events other than pheasant hunting. We knew when the conditional use permit was granted we would have to put up with disturbing noise from the shooting. We opposed the original CUP and still do.*

*Since the original conditional use hunting permit was granted, the Davises have:*

- (1) Completed a very imposing hunting lodge,*
- (2) Altered Spring Creek to create a pond (without the consent of the DNR),*
- (3) Built a swimming pool too close to Spring Creek (without consent of the DNR), and*
- (4) Held numerous celebratory events at the Spring Creek Hunting Lodge.*

*The Davises seem to feel that rules don't apply to them. They didn't contact the DNR about altering the creek or building the swimming pool because they knew if they did, they would not have been able to change the creek or build the pool. Any fines they may have received would be insignificant in comparison to the benefits they received from the pond and the swimming pool. We don't know why the Davises are entitled to special treatment – is it their wealth or do they have friends in high places. Maybe everyone except us is a member of the Spring Creek Hunting Club! This hunting lodge is not an asset to us or to our part of the community.*

*We were not informed or aware that the Town of Union acknowledged and approved a use much more than just hunting in the field or that the town extended CUP hours to 10 pm in recognition of events other than hunting. We should have been notified of this alleged amendment to the CUP. Is there additional law patrol on the very hazardous East Union Road during these events?*

*WE DO NOT WANT TO LIVE NEXT TO A NIGHTCLUB! As far as we know, we live in an area zoned agricultural. On Tuesday evening, July 8, fireworks were ignited from the Davis property. Livestock doesn't react well to gunshots/fireworks. We didn't call anyone when the fireworks started – should we have? We would like to co-exist peacefully with the Davises. Once again, please consider our opposition to any permits being granted to the Davises."*

Tom Davis stated that with regard to altering the creek, that was never done, and the DNR was out to inspect it. There would have been severe fines imposed if he had done something to it (the creek). Davis stated that the creek was only cleaned out. Francis stated that he talked to a Senior Land Conservationist with the DNR about the situation on Tuesday; the individual he spoke to stated that Spring Creek is considered a trout stream and you cannot move that much dirt that close (300') to a trout stream. The DNR is aware of the situation and has not yet made a decision on it, unsure if restoration would do more harm than good. According to Francis, the Conservationist felt what Davis did was illegal. Davis stated that his pool is more than 300' from the stream. Bob Fahey stated that a building permit was issued after the construction started, and was for the electrical work only. No permit was issued for the pool construction, they are not required for in-ground pools the way the Town's zoning code is currently set up. Electrical work was done prior to the Davis' receiving the permit. Gruebling believes the trout stream issue is a DNR issue, not a Town issue. Francis stated he spoke to Rick McCoy about his shooting preserve in Magnolia, who told Francis that he has over 600 acres and a small clubhouse, does not sell memberships, and has used his clubhouse a few times for family meetings.

Per previous minutes, Francis would like a copy of a membership agreement. Mitchell Olson, attorney representing the Davis', stated that the earlier discussion regarding the Davis' pool was irrelevant to the matter of their CUP, as the pool is for his private residence. Olson distributed a letter from Janice Ringhand supporting the Davis' operation, suggested/draft membership rules & privileges, and suggested wording for the CUP. Gruebling stated that Ringhand's letter references a club, not a privately owned business. Additionally, he noted that the club she referred

to is in Green County; he would like to know how the parcel it is located on is zoned. Gruebling asked if Olson had gathered information regarding the number of hunting clubs in Wisconsin, and how many allow functions as was requested at a previous Plan Commission meeting; Olson had not gathered this information, as he did not feel that it was relevant to the matter at hand. Gruebling felt this information should have been provided, as they presented information at the previous meeting that stated that "standard practice" at hunting clubs throughout Wisconsin is similar to how the Davis' lodge is operated. Davis stated that the lodge only had two hunters last year, as there was 4 feet of snow in the field and they were unable to get their four-wheelers back in to set the birds. The prior year, according to Davis, the lodge had 47 hunters.

Exum would like to hear Attorney Dregne's opinions on the issue. Francis stated that he had specifically asked Dregne's opinion on whether the extension of the lodge hours to 10 pm on March 29, 2007 would indicate the assumption that the meetings at the lodge are continuing throughout the year, and not just during the dates of operation listed on the CUP. Exum recalled the discussion regarding lodge usage until 10 pm, but believes that nothing regarding year round use was discussed at that time.

Attorney Dregne was not at earlier meetings where this issue was discussed. The Town Board authorized him to review the issue and he reviewed what was provided by Clerk Ylvisaker. The notice to neighbors within 1000' of the parcel dated January 5, 2004, states "Tom and Connie Davis, 534 Vision Dr., Evansville, request a conditional use permit for property located in the SW ¼ NE ¼ of Section 12 along North East Union Rd. The property is a 43.9 acre parcel zoned A1. They would like to construct a building for raising pheasant and also for cold storage (garage). Part of this building would be used for a gathering place for pheasant hunters that would be used for a gathering place for pheasant hunters that would be using this as a shooting preserve by the creek." There was a public hearing before the Planning and Zoning Board on January 29, 2004 (Dregne did not have a copy of the minutes for review) The minutes of the Town Board meeting from February 5, 2004 state:

"Tom is seeking a permit for 1,000 birds a year. He reiterated his times of operation as presented at the January 29<sup>th</sup> Planning and Zoning meeting. He also stated that he won't be selling anything in the building. And that there would be no alcohol for sale; however, people may bring in their own. There will be a maximum of three to four hunters in the field at a time. Supervisor Franklin voiced concern about the driveway location and that it provide enough sight distance. Motion by Supervisor Krajeck, to approve the Conditional Use Permit with the stipulations as recommended by the Planning & Zoning Committee on January 29, 2004. Second by Supervisor Franklin. Motion passed by unanimous roll call vote."

On February 5, 2004 a Conditional Use Permit was issued, including the statement granting permission to the Davis' "...to operate a pheasant shooting preserve on parcel 6-20-94 located along North East Union Rd. in the SW 1/4, NE 1/4 of Section of the Town of Union. The pheasant preserve may be open by appointment only between the hours of 8 a.m. and 5 p.m. Monday through Friday and from 8 a.m. - 5 p.m. on Saturdays and noon to 5 p.m. on Sundays beginning September 1<sup>st</sup> and ending December 31<sup>st</sup>. Hunting may commence at the east-west property line which is approximately 1,400 feet from the south property line. This permit is to be reviewed by the Town Board at a public hearing to be held at the January 2006 Town Board meeting. Upon review, the Town Board can extend the permit or deny extending the permit based on performance criteria stipulated in the permit and any other issues brought to the attention of the Town Board."

Dregne stated that some uses of property are permitted as rights; others are permitted by the Town if they meet the standards put forth in the zoning code. Granting a CUP is a legislative determination, similar to rezoning property, and as such there is a procedure applicants must go through including application, publication of a Class 2 notice, notice sent to neighboring land owners. The purpose of the notices to neighbors is because neighbors have an interest in how the proposed use will affect them. In Dregne's opinion, neighbor notifications also apply to amendments of CUPs, not just upon granting new ones. Larsen questioned if technically the Town is amending CUPs every time they are renewed, as the dates of the CUP are changed. Dregne quoted the Town of Union Zoning Code, Section 17.18 sub (5): "...the permit may require a review and renewal period in which case the applicant will need to return to the Plan Commission for their review of how the conditional use is working and whether or not to extend the approval of the permit."

Dregne confirmed that the property in question is zoned A1, and as such may be used as permitted in the Town of Union Zoning Code. The Code specifically states "E. Riding stables, riding schools, and shooting preserves" as permitted uses. Dregne reads "shooting preserves" as hunters actually engaged in hunting, and as such the lodge may be used by hunters and as incident to hunting. Dregne believes the hours of operation and dates are very clearly identified in the original CUP. That original CUP was scheduled for review in January 2006.

The January 5, 2006 meeting minutes state:

"Tom Davis presented copies of other pheasant hunting clubs and their dates. Tom would like to have the hunt club opened until April 30<sup>th</sup>. He stated that he would like to go year-round. So far he has only been open since early December 2005.

Emily and John Winburn who are neighbors do not want the season extended nor alcohol served at the premises. Don Moen another neighbor stated that he didn't have a problem extending the season but was concerned about alcohol. A copy of a incident report of underage drinking was read by the chairman. Eight arrests were made at the residence. Sharon Franklin noted concern for farmers in the field next to the preserve. Davis responded that shot doesn't travel very far.

Public Hearing closed at 7:47 p.m. Motion by Chairman Schneider to renew the conditional use permit approving the request to operate the present hunting reserve from October 1<sup>st</sup> through April 30<sup>th</sup> continuing through this season to April 30, 2006 with a review date for renewal at the monthly meeting in January, 2007. Second by Supervisor Krajeck. Motion passed by unanimous roll-call vote."

The CUP issued on January 5, 2006 included the language change to state "The pheasant preserve may be open by appointment only between the hours of 8 am and 5 pm Monday through Friday and from 8 am -5 pm on Saturdays and noon to 5 pm on Sundays beginning October 1<sup>st</sup> and ending April 30<sup>th</sup>." It is unclear at this time if a Class 2 notice was published prior to the meeting, or whether notice was mailed to neighbors within 1000' of the location. Therefore, Dregne is unsure at this time if the change in dates was a valid amendment to the CUP or not.

At the March 29, 2007 Plan Commission meeting, the minutes reflect Kim Gruebling questioning the use of the lodge for weddings and the expansion of the lodge's use. At that time, Marty Johnson also questioned the use of lodge, and an ad in the phone book advertising for "lodge bookings" was referenced. Additionally, the minutes of the meeting reflect the following: "Tom Davis stated he does not provide any booze nor beer to the patrons. He noted however; that they are allowed to bring their own alcohol. Doug Zweizig received clarification from Tom that the hunting stops at 5 p.m. but use of the lodge continues after that until 10 p.m." The CUP was approved with the following language:

"The pheasant preserve may be open by appointment only between the hours of 8 a.m. and 5 p.m. Monday through Friday and from 8 a.m. - 5 p.m. on Saturdays and noon to 5 p.m. on Sundays beginning October 1<sup>st</sup> and ending April 30<sup>th</sup>. Hunting may commence at the east-west property line which is approximately 1,400 feet from the south property line. This permit is to be reviewed by the Plan Commission at a public hearing to be held at the March 2008 meeting. Upon review, the Plan Commission can extend the permit or deny extending the permit based on performance criteria stipulated in the permit and any other issues brought to the attention of the Plan Commission. Failure to request board review prior to the review date will void this Conditional Use Permit and cause the party to fully reapply for a new conditional use permit. This conditional use permit is non-transferrable."

The motion for approval was amended by Mike Exum to include that the lodge usage ends at 10 pm. The CUP actually issued on March 29, 2007 does not include the amendment and reference to the lodge usage being allowed until 10 pm. Dregne stated that this CUP also faces the same issues of validity, regarding Class 2 publication and neighbor notification.

Dregne verified that Tom Davis did request review of the CUP verbally to Clerk Ylvisaker in a telephone conversation.

Dregne reviewed the Town's Zoning Code, which under A1 zoning lists permitted and typical uses for the zoning district; permitted uses include riding stables, riding schools, and shooting preserves. His interpretation of the CUP allows the property to be used as a pheasant hunting preserve, and the lodge can be used by people using the land as incident to a shooting preserve. Weddings, graduation parties are not incidental to use of the property as a shooting preserve.

Currently, the potential problems with the CUP include the months of use and hours of operation, and the fact that the changes granted may not have followed procedural requirements and therefore the changes may be invalid. Even if the procedural requirements were followed for the change in hours, that does not mean that the months of operation were changed.

Dregne stated that the Town's options at this point are 1) extend the conditional use permit, or 2) not extend the conditional use permit. Cannot at this time amend the CUP, including adding language to clarify what is meant. The

grounds for considering extension include using it outside of allowed dates/times and for unpermitted uses. Dregne was of the opinion that denial of the CUP may well result in legal action on the part of the property owners. The Town may notify the property owner of the requirements, and can recommend that the Town Board work with the Building Inspector and property owner to meet requirements. For amendments, it is Dregne's opinion that the Town needs to go through the proper process, including publication of a Class 2 notice and neighbor notification.

Francis asked, if they want to reapply, requesting the conditions they have laid out, how soon could that occur and how would that proceed. Dregne stated that an application could be submitted at any time and the process outlined in the ordinance would be followed, and timelines for publication of notices and neighbor notifications would need to be adhered to. Dregne stated that the Plan Commission could move to extend the current CUP as it is worded, and the Davis' could request amendments to the CUP per the process outlined.

Don Moen, neighbor: Would like clarification regarding amendments to the CUP requested by the property owner, would a letter be sent at that time to all property owners within 1000'? Answer: Yes.

Larsen brought up the issue of whether or not the original CUP was ever really amended; Dregne feels that assuming that the procedural requirements were not followed, the Town could face legal action from the owner if it attempted to enforce language that was not officially amended.

Doug Lee questioned if the neighbors could take legal action against the Davis'? Per Dregne, yes. Gruebling wanted clarification that despite the amendments not being valid, there were still no questions about the lodge not operating through May, June, July and August? Dregne feels those dates are accurate.

Olson stated that it has been clear since the original application in 2004 that the lodge is going to be used by hunters and as a benefit of their membership. Lee clarified that it was never stated that the lodge would be used for parties, he felt it was always presented as a couple of hunters and a six pack of beer talking after they were done hunting.

Olson stated that in the 2007 minutes, there was clear discussion of the use of the lodge by members, and the Town approved the extension of the hours of use with no specification of dates. Clearly, use of the lodge should be allowed year round. Olson believes that the Davis' are entitled to an extension of their existing CUP; they have provided to the Plan Commission suggested language to clarify the CUP.

Don Krajeck stated that even though the hours were changed, the dates of operation were never changed.

Regarding the 2007 discussion, Zweizig believes the essence of the discussion was that hunting stops at 5 pm, can the hunters stay longer for a beer? However, prior to the request for extension of hours, hunters were staying late so they were in violation prior to the change.

Public hearing closed at 8:42 pm.

Gruebling believes that the Davis' don't think they need to abide by the CUP; by his own admission Tom Davis stated he had 5 events this year and three last year; Gruebling doesn't believe he is going to stop holding events. He believes the Plan Commission should deny the CUP. Gruebling stated that Davis refuses to take any wording off of his membership form about parties, does not want to meet the Town halfway. Larsen questioned what Gruebling meant by "meeting halfway"; Gruebling stated it means removing weddings and events from the membership. Gruebling supported the lodge in the past, for use by hunters. He feels this is going beyond what is allowed in an A1 zoned area. Instead of meeting the Town halfway, Gruebling feels Davis keeps pushing the envelope. His recommendation is to not extend the CUP, as he feels that the Town is tacitly agreeing to their current practices if it extends the CUP. Dregne suggested that the Town clarify what is expected under the CUP's current language, as part of extending the CUP.

Exum questioned what the Town's enforcement options are; per Dregne, the town can impose fines, take enforcement action which may involve litigation, or revoke the CUP (although he felt non-extension of the CUP was a better option than revocation). Larsen questioned if the desired use of the property would fall under a permitted use in the Town's Zoning Code for A1 parcels; Dregne feels it would be hard to convince a judge that those uses are allowed under the zoning code, but the Davis' could make the argument that the Town knew what was going on and did not stop it. Lee feels that most of the current information regarding lodge usage has come to light in the past 4-6 months, and no legal counsel was involved in the past, therefore he doesn't think that argument that the Town knew what was going on and did not stop it would be valid as they are addressing the situation now. Gruebling stated that the Davis' were warned about holding weddings at the lodge last year. Dregne asked Gruebling if that was his intention when he

made his statements referenced in the March 29, 2007 Plan commission meeting minutes; Gruebling confirmed that it was. He stated he sees no correlation between hunting and weddings, other events. Francis questioned Gruebling; he could not see how membership benefits could include use of the lodge? Gruebling stated that he has hunted in South Dakota, Nebraska, Iowa, Wisconsin, and other states, and hunted throughout the state of Wisconsin and none of the facilities he visited have had such a benefit to their membership. Members at the establishments he has visited take their dog out in the field and shoot, and there might be a place to have a cup of coffee or a beer after the hunt. There were no large parties held, and if they were they were hunting related (i.e. hunt club, business came out and treated their employees, bird cleaning) Zweizig recalled that the Ducks Unlimited representative that spoke at a previous meeting stated that he had delivered to clubs throughout the state and that events of that type were not common.

Exum stated that one concern has been alcohol; at weddings and graduations, she can't believe that everyone is bringing in their own bottle or beer in. the Town's Alcohol ordinance states "No person, firm or corporation shall vend, sell, deal or traffic in or have in their possession with intent to vend, sell, deal or traffic in or, for the purpose of evading any law or ordinance, give away any intoxicating liquor or fermented malt beverage in any quantity whatever, or cause the same to be done, without having procured a license as provided in this Chapter..." Dregne's understanding is that the Davis' have stated that they only allow others to bring in their own alcohol for personal consumption, and are not allowing other to vend or sell alcohol. Exum questioned "giving away" alcohol; people are not bringing in a quarter barrel of beer for their own consumption at weddings or graduation parties. Dregne states that per the history of the issue and minutes, it appears that hunting parties would be allowed to bring in their own alcohol.

Larsen's recollection is that it did come up in 2007 that there would be other types of events other than hunting, however his recollection differs from the rest of the members and perhaps this is just the impression he got. He stated he thought the hours were extended to 10 pm for events other than hunting, such as weddings. Larsen recalled a wedding was held there, but ended at 12:00 am. He felt it was odd at the time that they would want 10 pm as an ending time, midnight would seem more normal.

Dregne recommended that if it is the intent of the Plan Commission to avoid giving tacit approval, they must be sure to make the record clear that 1) they believe the CUP is limited to pheasant hunting and other uses that are incidental to hunting, 2) the dates and times of operation are what they are, 3) that the Davis' have been operating in violation of the CUP, and 4) that extension of CUP is not approval of operation in violation of the CUP; he would additionally recommend that the Town Board use its resources to enforce the CUP and assure that they are operating in compliance with it. The Plan Commission needs to decide what they believe the dates and hours of operation are, based on the history and legality of previous records.

Fahey believes the CUP clearly tells the Davis' what is and is not allowed; he believes it was also clear on the building permits that were issued and there should have been no question from day one what the facility was to be used for. Fahey agrees that monitoring may be necessary, but would like to see them be given another chance to come into compliance. Dregne suggested that if the decision is to extend the CUP, the Town authorize him to work with the Building Inspector to develop an appropriate monitoring and enforcement plan. Zweizig thought the idea of a shooting preserve as presented in 2004 was reasonable, and the CUP as it reads sounds reasonable; however he is unsure of the dates and hours that would be considered legal. Dregne's opinion is that the dates and hours in the *original* original CUP (2004) are the ones to go by, as the subsequent changes were not noticed properly. Gruebling feels it would be appropriate to extend that CUP, if the Davis' are given warning about what is allowable and not, that the facility is to be used for hunting and the expectation is to have 3-4 hunters at the location at a time, there should not be a large number of people at the facility at one time. He questioned if sending a letter is appropriate, or if the meeting minutes would be sufficient. Dregne stated that there should be a very clear motion made that includes whatever needs to be said to clarify the Plan Commission's position. The motion should include no sanctioning what appear to be violations of the CUP.

Motion to recommend that the Town Board extend the Conditional Use Permit with the understanding that the Conditional Use Permit is the one that was in fact approved by the Town and issued by the Town Clerk on February 5, 2004 and that the Plan Commission believes that the Conditional Use Permit is not ambiguous as to what uses are allowed under the Conditional Use Permit and is not ambiguous as to the dates and times to which is allowed, and the Plan Commission finds that the change to the dates on the Conditional Use Permit by the Town Board on January 5, 2006 was not valid because it was not made in accordance with the procedural requirements for amending a Conditional Use Permit, the Plan Commission finds that the change made to the time which the lodge could be used in March 2007 was not valid because it was not made in accordance with the procedural requirements for amending a Conditional Use Permit; and the Permit issued by the Town Clerk on February 5, 2004 allows this property to be used as a pheasant shooting preserve and the Plan Commission finds that means for the lodge to be used by persons in

conjunction to such hunting activities and incidental to such hunting activities only, and the Plan Commission requests that the Town Board authorize and direct the Town Attorney and the Building Inspector to develop and implement a plan to monitor compliance with the Conditional Use Permit and report any violations of the Permit to the Plan Commission and the Town Board, and that the extended Conditional Use Permit be extended only to March 2009 and that the applicant be required to seek, in writing, review of the Conditional Use Permit no later than February 15, 2009 for review by the Plan Commission in March 2009. Motion made by Kim Gruebling. Second by Doug Lee.

Comments regarding Plan Commission members' feelings about whether the facility is operating in compliance or not in compliance:

Gruebling does not believe that the Davis' has been working within the limits of the CUP; according to their own statements they had 5 events this summer during months when there is not supposed to be anything out there, and had 3 events last year. The Plan Commission heard from one of its members that Davis asked to extend his hours to 10 pm and then held events until 12 am. Basically, he is having events he's not supposed to have, continuing until times he's not supposed to have them, and is not working in good faith. The Plan Commission is trying to meet him halfway, but if the violations continue they will have to take action.

Larsen questioned what the Town Attorney and Building Inspector will do to develop a plan to monitor the compliance, will there be something for the Plan Commission to review at their next meeting. Dregne felt this depended upon what the Town Board's decision was on the Plan Commission's recommendations.

Roll call vote: Alvin Francis– Yes; Doug Zweizig – Yes; Kim Gruebling – Yes; Dave Pestor – Yes; Doug Lee – Yes; Eric Larsen – Yes; Renee Exum - Yes. Motion carried 7-0.

**Review and possible recommendation to the Town Board for adoption of the Draft Large Wind Turbine Siting Ordinance. During the current moratorium the Large Wind Turbine Citizens Committee has developed a recommended ordinance to protect the public health and safety of residents.**

Francis recused himself from the discussion. Zweizig chaired the discussion.

Zweizig prepared a list of issues to be discussed, and distributed it to the group.

Possible future working meeting dates: August 11, 12, 19. Clerk Ylvisaker will check with the library on the availability of the meeting room for those dates.

Zweizig brought up the issue of the Commission's request to the Board to have Dregne prepare a draft of the ordinance. Lee feels that it is appropriate to have the attorney review it, as he will be the one defending it.

Motion to recommend that the draft ordinance upon which the Plan Commission would act be prepared by the Town Attorney made by Eric Larsen. Second by Renee Exum.

Clerk Ylvisaker will update the draft ordinance with all the changes approved by the Plan Commission thus far, using the chart of changes prepared by Exum and the minutes from the working meetings.

Clarification that the motion is requesting that Dregne draft the ordinance when the Plan Commission is ready for it to be done, not immediately as the Commission has not reviewed the entire ordinance for changes yet.

Motion carried by unanimous voice vote.

Regarding the issue of "Public Roads" section of the ordinance, page 18, section H: Gruebling stated that "Town of Union Road Commissioner/Supervisor" needs to be clarified, as does who exactly overweight permits are obtained from. Dregne stated that the question of determining road damage and where it comes from is very difficult, except in unusual situations. His concern is the challenge that will face the Town to prove who damaged the road. Additionally, Dregne noted that wind turbines are not the only projects in the Town to use heavy equipment, and therefore this may not be the appropriate place to address this issue. Regarding a letter of credit, how will the amount of the letter be determined? Dregne suggested that if there are other permitting processes that will better address the issue, perhaps that is a better route to take. He questioned if the permit process deals with road damage issues? Lee stated that the permit puts the trucks on roads that they won't damage. Lee will research the permitting issue and report back.

Motion to adjourn made by Kim Gruebling, second by Eric Larsen. Motion carried by unanimous voice vote. Meeting adjourned at 9:49 pm.

*Respectfully submitted by:*  
*Regina Ylvisaker, Clerk*

Note: Minutes are considered draft until reviewed and approved by the Plan Commission at a properly noticed meeting